

CITY OF NEWPORT BEACH
Planning Commission Minutes
February 17, 2011
Regular Meeting – 6:30 p.m.

ROLL CALL: Commissioners Eaton, Unsworth, Hawkins, McDaniel, Toerge, and Ameri – present. Commissioner Hillgren – excused.		
STAFF PRESENT: Patrick Alford, Planning Manager Leonie Mulvihill, Assistant City Attorney Jaime Murillo, Associate Planner Fern Nueno, Assistant Planner Marlene Burns, Administrative Assistant		
POSTING OF THE AGENDA: The Planning Commission Agenda was posted on February 4, 2011.		
PUBLIC COMMENTS: Commissioner Hawkins stated that on February 11, 2011, Speak Up Newport held the Mayor's Dinner, which was well attended. Mayor Michael Henn's speech was well received; it addressed the current and future state of the City.		
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REQUEST FOR CONTINUANCES:		None
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CONSENT ITEMS		
SUBJECT: MINUTES of the regular meeting of January 20, 2011. Motion made by Commissioner Hawkins and seconded by Commissioner Toerge to approve the minutes as corrected. Motion carried with the following vote:		ITEM NO. 1 Approved
Ayes: Noes: Excused:	Eaton, Unsworth, Hawkins, McDaniel, Ameri, and Toerge None Hillgren	
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Chairperson McDaniel needed to recuse himself from Item No. 3, Netherton Residence (PA2011-016), so he proposed that Item No. 4, Discussion of Operator License Ordinance (PA2010-041), be heard before Item No. 3, Netherton Residence (PA2011-016). Item No. 2, Solar System Installations (PA2010-113) still to be heard first. Motion made by Commissioner Hawkins and seconded by Commissioner Ameri to re-order the agenda as suggested. Motion carried with the following vote:		Approved
Ayes: Noes:	Eaton, Unsworth, Hawkins, McDaniel, Ameri, and Toerge None	

Excused:	Hillgren	
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CONTINUED PUBLIC HEARING ITEMS		
<p>SUBJECT: Solar Energy System Installations - (PA2010-113)</p> <p>The project is a proposed code amendment, voluntary guidelines, and incentives applying to the installation of solar energy systems.</p> <p>Fern Nueno, Assistant Planner gave a brief overview and added that there was some additional documentation and some public comments related to the project, which was received earlier in the day.</p> <p>Chairperson McDaniel acknowledged receipt of the documentation; and noted that when the documentation is received ten minutes prior to the beginning of the meeting it is not possible for the Planning Commission to review the materials thoroughly.</p> <p>The Planning Commission discussed the following issues:</p> <ul style="list-style-type: none"> • A regulation to be added in the ordinance requiring additional setback from the roadway and additional landscaping buffers, in addition to the solar energy permit requirement so as to mitigate glare issues. • Drainage issue to be addressed by regulations in the Building Code requiring properties to manage the drainage off of their property to avoid nuisance and protect the quality of the storm drain system. • A pitched roof versus a flat roof and the solar energy panel's height limitation. For a pitched roof the height limit is 24 feet and for a flat roof the height limit is that of 29 feet in order to promote solar panel installations around the City. • Reduction in the height of the solar panel limit to be from five feet to three feet above the 24-foot flat-roof height limit. • Commissioner Ameri proposed the Commission address the solar panel issue by looking at an overall regional solution. <p>City Attorney, Leonie Mulvihill, stressed the fact that aesthetics should not be taken into consideration as it is state law, and that only an impact on health and safety should be considered.</p> <p>Public comment period was opened.</p> <p>The residents of the surrounding neighborhood and general public expressed the following opinions:</p> <p>John Petry – 1239 Bayside Drive</p> <ul style="list-style-type: none"> • Impacted by the Bayside Drive solar array. • Expressed hope that the ordinance will help others. • The City should lobby to revise state law. • Health and safety aspects should address engineering. <p>Derek Spalding of the Orange County Chapter of the National Electrical Contractors Association – 180 South Anita Drive, Suite 103, Orange, California 92868</p>		<p>ITEM NO. 2 PA2010-113 Approved</p>

- The ordinance has a lot of positive features.
- Solar panels already have anti-reflective coatings.
- After market anti-reflective coatings could void manufacturer's warranties.

Matt Stoutenburg – 15052 Red Hill Avenue

- Suggestion that the design of the system should fit the house, the example at Bayside Drive is irresponsible.
- Size from manufacturer of the solar panels and the tilt of the solar panels is always changing. So one should look at the restrictions on a case-by-case as each building has different characteristics, including if the building is commercial or residential.
- Height above roof 5 feet versus 3 feet cannot be a rule because of different building characteristics.
- If something causes glare, it does not mean that glare will be there year long.

Public comment period was closed.

Motion: made by Commissioner Toerge and seconded by Commissioner Hawkins to adopt a resolution recommending the City Council approval of the Code Amendment No. CA2011 -001 and voluntary guidelines with incentives *with the following modifications:*

- Modify the Resolution Finding No. 9 by having the word "prevent" be replaced by the word "reduce" and should read as follows, *"Screening of equipment other than solar collectors will reduce any negative noise impacts and dangers from exposed electrical equipment."*
- Modify the Draft Regulations 20.30.140.A.2.a, by changing the height to be from five feet to be three feet and read as follows, ***"Roof-mounted. Roof-mounted solar collectors may project up to twelve inches above a roof plane with a minimum 3/12 pitch, but may not project vertically above the peak of the sloped roof to which it is attached. Roof-mounted panels may project up to three feet above a flat roof plane, notwithstanding the maximum height limit for the Zoning District in which the property is located."***
- Modify the resolution by adding the following under Section 3 as follows:
"The Planning Commission hereby further recommends that staff further study the need for anti-glare coatings and their potential impacts to the efficiency of solar energy systems and make appropriate recommendations to the City Council.
The Planning Commission hereby further recommends that staff further study limiting the size of solar energy systems based on the amount of power generated to only the energy needs of the property and make appropriate recommendations to the City Council.
The Planning Commission hereby further recommends that the City Council, either individually, or in cooperation with other jurisdictions, inform the State Legislature of the unintended consequences of the Solar Rights Act and recommend appropriate amendments.

<p><i>The Planning Commission hereby further recommends that the City Council regionalize the issue by encouraging the consolidation of solar energy systems."</i></p> <p>Commissioner Hawkins proposed that the City lobby and negotiate with other cities to challenge if necessary, and indeed look at regional solutions.</p> <p>Commissioner Toerge, maker of the motion, agreed to the proposed, Commissioner Hawkins seconded the motion.</p> <p>Motion carries with the following vote:</p>		
<p>Ayes:</p> <p>Noes:</p> <p>Excused:</p>	<p>Eaton, Unsworth, Hawkins, McDaniel, Ameri, and Toerge</p> <p>None</p> <p>Hillgren</p>	
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NEW BUSINESS		
<p>SUBJECT: Discussion of Operator License Ordinance (PA2010-041)</p> <p>On January 25, 2011, the City Council adopted Ordinance No. 2011-002 amending the Municipal Code to incorporate a new chapter (Chapter 5.25) that will require operators of certain establishments that offer alcoholic beverages for on-site consumption in combination with late hours, entertainment, and/or dance to obtain an Operator License. The intent of this agenda item is to provide the Planning Commission with an overview of the Ordinance and answer any questions the Commission may have.</p> <p>Jaime Murillo, Associate Planner, gave a brief overview of the Operator License ordinance and presented a PowerPoint presentation.</p> <p>The Planning Commission discussed the following issues:</p> <ul style="list-style-type: none"> • There was some concern that one individual would have additional obligations and may determine the fate of each case differently, whereas some conditions may be harsher on some businesses and may be more lenient on other businesses. However, redress is available for discrimination and the City Attorney's Office is a resource available to advise the decision-makers in those cases. • The Planning Commission did not foresee that the process would be directed to the Police Department administer the Operator License program, resulting in no discretion of elected or appointed officials for public oversight. <p>The report was received and filed.</p>		<p>ITEM NO. 4 PA2010-041</p>
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PUBLIC HEARING ITEMS		
<p>SUBJECT: Netherton Residence - (PA2011-016)</p> <p>The application is for a variance to allow a wall, up to 6 feet 8 inches in height, to be constructed within the 10-foot "streetside" side setback where the maximum height for walls, fences and hedges is limited to three (3) feet.</p> <p>Chairperson McDaniel recused himself, due to a real property conflict of interest at approximately 9:07 p.m. and left Vice Chairperson Unsworth to continue with the meeting.</p> <p>Patrick Alford, Planning Manager, gave a brief overview and provided a</p>		<p>ITEM NO. 3 PA2011-016 Approved</p>

<p>PowerPoint presentation.</p> <p>Vice Chairperson Unsworth, noted that on the first page of the Resolution, Item No. 2, "6 feet 8-inches" should be replaced with "5-foot 2-inches" as the City measures the height differently than the Homeowner's Association measures the height.</p> <p>Commissioner Eaton asked for clarification regarding the location of where the street light would be moved to.</p> <p>Public comment period was opened.</p> <p>The Applicant, Larry Netherton, addressed the street light question by stating that it arose out of a need to mitigate the parking and circulation concern at the cul-de-sac. Proposed to go at the far corner of the Netherton's property, as approved by the Homeowner's Association.</p> <p>Commissioner Ameri left the meeting at approximately 9:09 p.m.</p> <p>Public comment period was closed.</p> <p>Motion: made by Commissioner Toerge and seconded by Commissioner Hawkins to adopt a resolution approving Variance VA2011-003.</p> <p>Motion carries with the following vote:</p>		
<p>Ayes:</p> <p>Noes:</p> <p>Excused:</p> <p>Absent:</p> <p>Recused:</p>	<p>Eaton, Unsworth, Hawkins, and Toerge</p> <p>None</p> <p>Hillgren</p> <p>Ameri</p> <p>McDaniel</p>	
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STAFF AND COMMISSIONER ITEMS		
<p>Planning Director's report:</p> <p>Planning Manager, Patrick Alford, stated that the City Council met on February 8, 2011. The Council received the first quarterly progress report, including Banning Ranch and the project proposed in the 600 Block of Newport Center Drive.</p>		ITEM NO. 5
<p>Planning Commission reports:</p> <p>Commission Hawkins, stated that due to staffing reductions, the Economic Development Committee did not meet this month. The Business License Sub-Committee did meet this month and may be continuing its work. A report from the City Manager's office was received that proposed to eliminate the Economic Development Committee in addition to EQAC.</p>		ITEM NO. 6
<p>Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.</p> <p>Commission Hawkins requested to have the in lieu parking brought to the Commission.</p>		ITEM NO. 7
<p>Requests for excused absences – Commissioner Toerge requested to be absent on March 3, 2011.</p>		ITEM NO. 8
<p>ADJOURNMENT: 9:22 p.m.</p> <p>MICHAEL TOERGE, SECRETARY</p> <p>CITY OF NEWPORT BEACH PLANNING COMMISSION</p>		